

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201607783	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/10/2016 11:30 PM	Location of Incident: Dahill Road and Avenue P	Precinct: 62	18 Mo. SOL 3/10/2018	EO SOL 3/10/2018	
Date/Time CV Reported Mon, 09/12/2016 3:36 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/12/2016 3:36 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Lunetta	08799	936994	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Lunetta	Discourtesy: Police Officer Michael Lunetta acted discourteously toward § 87(2)(b)	
B.POM Michael Lunetta	Abuse: Police Officer Michael Lunetta frisked § 87(2)(b)	
C.POM Michael Lunetta	Abuse: Police Officer Michael Lunetta searched § 87(2)(b)	
D.POM Michael Lunetta	Abuse: Police Officer Michael Lunetta threatened to arrest § 87(2)(b)	
E.POM Michael Lunetta	Discourtesy: Police Officer Michael Lunetta spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on September 12, 2016.

On September 10, 2016, at approximately 11:30 p.m., PO Michael Lunetta stopped § 87(2)(b)'s vehicle on Dahill Road and Avenue P, in Brooklyn. PO Lunetta was working alone during the incident. § 87(2)(b) stated that he presented his ID and PBA card to PO Lunetta. PO Lunetta allegedly threw § 87(2)(b)'s PBA card on the dashboard of § 87(2)(b)'s vehicle without telling him to take the PBA card (**Allegation A**). PO Lunetta issued § 87(2)(b) a summons for disobeying signs (Board Review 08). After taking the summons, § 87(2)(b) threw the summons out of his window and proceeded to drive off. PO Lunetta engaged the police sirens and stopped § 87(2)(b)'s vehicle again. PO Lunetta asked § 87(2)(b) to step out of the vehicle and placed him in handcuffs. After § 87(2)(b) was placed in handcuffs, PO Lunetta frisked and searched § 87(2)(b) (**Allegations B and C**). PO Lunetta allegedly also squeezed § 87(2)(b)'s pack of cigarettes, crushing the cigarettes inside (**subsumed within Allegation A**). § 87(2)(b) was placed inside PO Lunetta's police vehicle. Inside the police vehicle, PO Lunetta allegedly told § 87(2)(b) "Take you to jail," and also said, "Asshole" (**Allegations D and E**). During the incident, PO Lunetta radioed for additional units. Once the additional units arrived on the scene, PO Lunetta obtained a summons book from the officers and issued § 87(2)(b) a summons for § 87(2)(b) (Board Review 07). § 87(2)(g)

§ 87(2)(g), § 87(4-b)

This case contains no video footage.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his CCRB interview § 87(2)(b)
- A Notice of Claim email query was sent to the New York Comptroller's Office on November 29, 2016. As of December 5, 2016, § 87(2)(b) has not filed a Notice of Claim in regards to this incident (Board Review 10).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has not filed any prior CCRB complaints (Board Review 04).
- PO Lunetta has been a member of the NYPD for 11 years and has had 11 CCRB allegations pleaded against him in five cases; none of his previous allegations were substantiated. § 87(2)(g)

### Findings and Recommendations

#### Allegations not pleaded:

#### Abuse of Authority-Detainment:

It is undisputed that § 87(2)(b) was detained in order for additional units to arrive so that PO Lunetta could issue him a summons for § 87(2)(b) since he did not carry a criminal court summons.

§ 87(2)(b) alleged that he was detained for approximately twenty minutes prior to the officers arriving and was released once PO Lunetta wrote the summons. § 87(2)(g)

**Allegation A -Discourtesy: Police Officer Michael Lunetta acted discourteously towards § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) alleged that after presenting his PBA card to PO Lunetta, PO Lunetta repeatedly asked him how he obtained the PBA card (Board Review 01). § 87(2)(b) told PO Lunetta that his boss's cousin gave him the PBA card. § 87(2)(b) did not indicate whether or not PO Lunetta gave him an opportunity to take the PBA card, but he stated that PO Lunetta threw the PBA card on the dashboard of § 87(2)(b)'s vehicle and walked away without telling § 87(2)(b) to take the PBA card. § 87(2)(b) also alleged that when he was pulled over the second time, PO Lunetta took § 87(2)(b)'s box of cigarettes from § 87(2)(b)'s pocket and squeezed it, crushing the cigarettes inside.

PO Lunetta stated that after he made attempts to verify how § 87(2)(b) had obtained the PBA card, he verbally told § 87(2)(b) to take the PBA card and also handed it to him by extending his arm towards § 87(2)(b) (Board Review 02). However, § 87(2)(b) just looked at PO Lunetta and did not take the PBA card. In response, PO Lunetta placed the PBA card by on the dashboard by the edge of the curvature. PO Lunetta stated that after he placed the PBA card down, the PBA card fell off the dashboard. PO Lunetta denied throwing the PBA card on the dashboard. PO Lunetta stated that during the second stop, he told § 87(2)(b) to exit the vehicle and patted him down. During the pat down, PO § 87(2)(b) felt a bulge in § 87(2)(b)'s pocket. PO Lunetta removed the box of cigarettes from § 87(2)(b)'s pocket which PO Lunetta acknowledged was causing the bulge. However, PO Lunetta denied squeezing the box of cigarettes or crushing § 87(2)(b)'s cigarettes.

§ 87(2)(g)

**Allegation B –Abuse of Authority: Police Officer Michael Lunetta frisked § 87(2)(b)**

§ 87(2)(g)

PO Lunetta acknowledged that he frisked § 87(2)(b) during the incident.

In his CCRB testimony, § 87(2)(b) did not allege that he was frisked. § 87(2)(b) stated that after he threw the summons out of the window, he heard police sirens which prompted him to stop his vehicle. PO Lunetta approached his vehicle, told him that he just threw the summons out, and ordered him out of the vehicle. § 87(2)(b) stated that he complied with PO Lunetta's orders. PO Lunetta then asked § 87(2)(b) to turn around, place his hands behind his back, and then placed him in handcuffs. § 87(2)(b) stated that he was wearing pants that had two front and two rear pant pockets. § 87(2)(b) had a box of "Marlboro" cigarettes in his left front pocket and had a "Zippo" lighter" and approximately \$40 in cash in his right front pocket. His two rear pockets were empty.

In his CCRB testimony, PO Lunetta, who was working alone during the incident, stated that he approached § 87(2)(b)'s vehicle a second time after seeing § 87(2)(b) toss the summons on the ground. PO Lunetta asked § 87(2)(b) for his license, registration, and insurance, but § 87(2)(b) did not immediately hand him the documents and appeared to be agitated. Moreover, § 87(2)(b) was moving around in the vehicle by shifting his body left and right and reaching towards placed he could not see. PO Lunetta stated that § 87(2)(b) reached between his legs, towards a plastic bag on the passenger seat, and towards the center console. PO Lunetta stated that he did not know what § 87(2)(b) was doing at the time. PO Lunetta denied seeing § 87(2)(b) grabbing anything in the vehicle. PO Lunetta instructed § 87(2)(b) to exit the vehicle because he was concerned for his safety due to § 87(2)(b)'s demeanor and hostility. PO Lunetta did not believe that § 87(2)(b) had a weapon on him, but he later stated that there was a possibility that he had a work knife on him because § 87(2)(b) had earlier mentioned that he was a cook. There were no additional reasons that PO Lunetta suspected that § 87(2)(b) had a knife. Once outside his vehicle, § 87(2)(b) was still shifting his body by swaying side to side. PO Lunetta saw that § 87(2)(b)'s hands were down by his side at this point, but he did not recall if § 87(2)(b) was holding anything at this point. § 87(2)(b) was still hostile by not complying with PO Lunetta's instructions because § 87(2)(b) initially refused to turn around when PO Lunetta instructed him to turn around and place his hands behind his back. PO Lunetta also told § 87(2)(b) to stop turning around because he kept turning towards him and § 87(2)(b) complied. § 87(2)(b) subsequently also placed his hands behind his back to allow PO Lunetta to handcuff him. PO Lunetta stated that he had concerns for his safety because § 87(2)(b) was initially reaching around inside his vehicle and he did not know if § 87(2)(b) placed anything in his pockets that could cause harm. PO Lunetta did not recall if he saw any bulges on § 87(2)(b). PO Lunetta subsequently patted down § 87(2)(b)'s waistband, down his legs, and his upper body.

Officers who conduct routine traffic stops may exercise their discretion to require occupants to exit a vehicle once a lawful traffic stop has been effected, out of concern for safety and without particularized suspicion, People v. Isaac 107 A.D.3d 1055(2013) (Board Review 03). An officer may frisk an individual if the officer reasonably suspects that the person is armed, People v. Debour 40N.Y.2d 210 (1976) (Board Review 14).

§ 87(2)(g)  
[REDACTED]

**Allegation C –Abuse of Authority: Police Officer Michael Lunetta searched § 87(2)(b)**

§ 87(2)(g)  
[REDACTED].

It is undisputed that PO Lunetta searched § 87(2)(b). Moreover, it is undisputed that § 87(2)(b) was not arrested during the incident.



going to take him to jail or threatening to arrest him. PO Lunetta stated that he did not have intent to arrest § 87(2)(b) during the incident.

§ 87(2)(g)

**Allegation E –Discourtesy: Police Officer Michael Lunetta spoke discourteously to § 87(2)(b)**

§ 87(2)(g)

In his CCRB testimony, § 87(2)(b) stated that while he was in the police vehicle, he heard PO Lunetta say the word “asshole,” though he did not know the context in which the word was used (Board Review 01). There were no additional officers or civilian witnesses present during this incident.

PO Lunetta denied saying “asshole” and did not recall using any profanities during the incident (Board Review 02).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer:

\_\_\_\_\_

Title/Signature

\_\_\_\_\_

Print

\_\_\_\_\_

Date